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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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| 09/715,495 | 11/17/00 | SAVOIE | A 0430/144 |

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EXAMINER

STASHICK, A

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 06/06/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/715,495

Applicant(s)

SAVOIE, ARMAND J.

Examiner

Anthony D Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 20) ☐ Other: _____

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DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-37 of U.S. Patent No. 5,768,809. Although the conflicting claims are not identical, they are not patentably distinct from each other because the Patent No. 5,768,809 includes similar structure that would read on the cleat and receptacle of the instant application and the method of placing the cleat in the receptacle of the US 5,768,809 and the instant application would be the same.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 9 contain the phrase "the ground-engaging member" in the 7th and 5th lines of the claims respectively. There is insufficient antecedent basis for this limitation in the claims. It appears that

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applicant has exchanged the terms ground-engaging structure and ground-engaging member. Applicant is advised that reference to the same part should be made by using the same language. To keep consistent throughout the claims, applicant should either change member to structure or structure to member.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claims 9-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Kilgore et al.

5,628,129. Kilgore et al. 129 discloses all the limitations of the claim including the following: a ground engaging structure (cleat end of 35 in Figure 1); an attachment structure 20 having vertical axis (that through the center of the receptacle) a base 30 to which the top of the ground engaging structure is attached; and a plurality of extensions 56, 58 projecting radially outward (see Figures); the extensions are adapted to engage the receptacle attachment structure and be securely engaged above a restraining ledge (95); a wall defining a cavity 30 between a top and bottom; portions of wall extend inward toward central vertical axis 75; opening in ledge (see Figure 10) inward from stopping wall 34; with shallow front and steep back (see Figure 10); incline in cavity and in same plane as extensions (see Figure 10). As can be clearly seen in Figures 10 and 13 of Kilgore et al., the wall 75 extends from the outside walls towards the center axis of the receptacle and also extends a portion of the depth of the receptacle; the extensions being equidistantly spaced (see Figures)

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7. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Arff 4,492,047 or Hrivnak 4,035,934.

Arff '047 discloses a ground engaging structure 19; an attachment structure 10 having vertical axis (that through the center of the receptacle) a base 20 to which the top of the ground engaging structure is attached; and a plurality of extensions 22, 23 projecting radially outward (see Figures); the extensions are adapted to engage the receptacle attachment structure and be securely engaged above a restraining ledge 21.

Hrivnak '034 discloses a ground engaging structure (cleat end, point, of 30 in Figure 1); an attachment structure 16 having vertical axis (that through the center of the receptacle) a base (bottom end of 30 on top side of 12) to which the top of the ground engaging structure is attached; and a plurality of extensions 36 projecting radially outward (see Figures); the extensions are adapted to engage the receptacle attachment structure and be securely engaged above a restraining ledge (18).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 9 above in view of Hagger 4,723,366 or Kelly 5,321,901. The references as applied to claim 9 above disclose all the limitations of the claims except for the skirt and its features. Hagger '366 and Kelly '901 each teach that a ground engaging spike attached to the sole of a shoe can have a skirt (10 in Hagger, Figure 1 and 23 in Kelly '901, Figure 4) with holes (12 in

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Hagger '366, Figure 1 and 25 in Kelly '901 Figure 4) in it to allow for the skirt to be fastened to the sole with a know golf tool and to better fasten the cleat up against the sole of the shoe to prevent debris from entering the receptacle while aiding in biasing the cleat against the sole to prevent accidental loosening of the cleat. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to place a skirt with holes in the top for fastening the cleat to the sole of a shoe, as taught by Hagger '366 or Kelly '901, to aid in biasing the cleat against the sole to prevent it from accidentally backing away from the sole during use and to allow for the cleat to be attached to the shoe sole using common golf tools.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 308-5648, email CustomerService3700@uspto.gov .

Any inquiry concerning the MERITS of this examination or any earlier communications from the examiner should be directed to Anthony D Stashick whose telephone number is 703-308-3876. The examiner can normally be reached on Tuesday through Friday from 8:30 am until 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,

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Paul T. Sewell can be reached on 703-308-2126. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3579 for After Final communications.

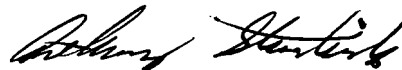
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

| | |
|---------------------------------|---------------------|
| Allowed Files & Publication | (703) 305-8322 |
| Assignment Branch | (703) 308-9287 |
| Certificates of Correction | (703) 305-8309 |
| Drawing Corrections/Draftsman | (703) 305-8404/8335 |
| Fee Increase Questions | (703) 305-5125 |
| Intellectual Property Questions | (703) 305-8217 |
| Petitions/Special Programs | (703) 305-9282 |
| Terminal Disclaimers | (703) 305-8408 |

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

| | |
|------------------------|---|
| Information Help line | 1-800-786-9199 |
| Internet PTO-Home Page | http://www.uspto.gov/ |



Anthony D Stashick
Examiner
Art Unit 3728

ADS
June 2, 2001